

## Protecting Parents' Rights When Conducting Investigations of Child Abuse and Neglect

### Guidelines for Implementing the Child Abuse Prevention and Treatment Act (CAPTA) 2003 Amendments

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#### INTRODUCTION

Intrusion into family life is sometimes necessary to save lives and protect children. Inappropriate intrusion, though, is unethical, often harmful, and may be illegal. Child protective services (CPS) workers who investigate reports of child maltreatment need guidelines for when and how the state's intrusion into family life is appropriate and necessary.

#### **In 2003, Congress amended the Child Abuse Prevention and Treatment Act (CAPTA) to require the following:**

- At the time of initial contact with individuals who are subject to a child abuse and neglect investigation, the investigation caseworker from the public child welfare agency must advise these individuals of the complaints or allegations made against them in a manner that protects the confidentiality of the reporter and
- Public child welfare agency caseworkers must be trained regarding their duties to protect the civil rights and safety of children and families from the initial case contact through treatment and termination.

Public child welfare agencies are the states' primary agent for child maltreatment investigation and assessment and for protecting children from harm from abuse or neglect. To meet these responsibilities, CPS workers must respond to community reports of potential maltreatment by conducting assessment and investigation.

During assessment and investigation of possible child maltreatment, CPS workers must balance their responsibilities for completing thorough investigations with their responsibilities to respect the civil rights of all concerned. This includes the rights of families and alleged offenders not to have agents of the state intrude into their home, question them or their children against their will and without explanation, or forcefully remove children from the home without good cause.

Balancing these responsibilities is challenging for CPS workers. CPS social work investigators must protect the civil rights of all concerned while utilizing every opportunity to complete a thorough investigation and risk assessment. Often the best way to collect information regarding possible child maltreatment is to enter the home and interview parents and children; and sometimes the best way to assure short-term safety for a child is to remove the child from the home.

Parents may exercise their rights and decline to cooperate with a CPS investigation. This can compromise a child welfare agency's ability to do a thorough investigation and assessment. Congress recognized the need for the states to address this possibility in enacting the 2003 amendments to CAPTA.

In June 2004, the Ohio Department of Job and Family Services (ODJFS) revised the Ohio Administrative Code to address the two CAPTA requirements mentioned above. Additional guidance was necessary for two important reasons: (1) to address the many interpretive practice issues facing public child welfare agency caseworkers who investigate child abuse and neglect, and (2) to address the training requirements concerning these duties. The original Ohio CAPTA guidance document, from which this publication was derived, was developed to meet that need. The original document has been revised into this publication in the hope that Ohio's experiences may be helpful to other states in their efforts to implement CAPTA requirements. This document provides guidelines to address commonly asked questions and dilemmas regarding the implementation of the two CAPTA provisions cited earlier.

These guidelines are intended to help public child welfare agency staff work with families to protect children from maltreatment, while at the same time protecting parents' constitutional rights. By necessity, discussion of CAPTA implications for specific practice situations are interpretive and must reflect relevant research and best practice standards. Statute, rule, or case law, including those related to CAPTA, may not currently exist regarding many specific issues involved in conducting child maltreatment investigations. Therefore, while our hope is these guidelines will be instructive, public child welfare agencies will still need to work with their agency attorneys and county prosecutors to implement these guidelines within local jurisdictions. Public child welfare agencies will need to consider their own internal operations, how their juvenile courts operate, and how jurists are likely to interpret legal concepts that affect the implementation of CAPTA.

#### GENERAL PRINCIPLES

Parents have a fundamental liberty interest in raising their children free of unwarranted government interference. This principle of Constitutional law has also been referred to as a right of family integrity or a right of privacy. Parents also have a right to be secure from unreasonable search and seizure and to receive the protections of due process of law established in the Fourth and Fourteenth Amendments to the Constitution.

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## Application of Fourth Amendment Rights to Child Abuse and Neglect Investigations

The Fourth Amendment to the Constitution prohibits unreasonable search and seizure of people, their homes, and their possessions, as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Entering homes or accessing children while conducting child abuse and neglect investigations is a form of search for purposes of the Fourth Amendment. Removing children from parental control is considered a seizure. Absent a prior court order or an emergency, parents' consent must be obtained before interviewing a child, interviewing another family member, entering a home, or removing a child from the home.

## Application of Fourteenth Amendment Rights to Child Abuse and Neglect Investigations

The Fourteenth Amendment says no state shall "deprive any person of life, liberty, or property without due process of law." Due process consists of both substantive and procedural elements. "Substantive due process" pertains to specific rights. It involves determining whether a right exists and, if so, the standard that must be met to deprive a person of that right. "Procedural due process" pertains to the type of process the state must provide to an individual before a person can be deprived of that right.

As applied to child abuse and neglect cases, courts have ruled that parents have fundamental rights to family integrity and privacy. With respect to child maltreatment, the substantive standard or threshold the state must meet before depriving parents of these fundamental rights is "clear and convincing evidence" of abuse, neglect, or dependency. Emergency situations require a less stringent standard. In an emergency, the state can remove children from their parents' care, based upon "probable cause" to believe their removal is necessary to prevent immediate serious harm.

Case law has held that emergency removals of children require the probable cause standard that a child is in immediate danger of "serious" harm. Therefore, whenever these Guidelines refer to emergency removals of children, or emergency situations during investigations, the standard will be probable cause to believe that a child's removal is necessary to prevent serious harm.

In cases where the agency files a petition in juvenile court to protect a child from serious harm, hearings must be held on these petitions, and the child's parents will have the opportunity to appear and contest the allegations. Procedurally, parents must be given prior notice of the allegations being made by the state and an opportunity to contest the allegations before a judge or magistrate. In emergencies, the court may proceed before a parent receives notice and an opportunity to be heard. However, after judicial action is taken in an emergency, the state must provide notice and an opportunity to be heard as soon as possible.

## Issue 1: Notification of Individual Subjects of Investigations

*The CAPTA Amendment of 2003 requires that, at the initial time of contact, the public child welfare agency must notify subjects of the child abuse or neglect investigation of the allegations against them.*

### Questions:

- *To which types of investigations does this requirement apply?*
- *How much detail regarding the allegation should the investigator provide to the subject of the investigation?*
- *What constitutes first contact?*
- *What if the investigator is unsure who the perpetrator is?*
- *What if, during the course of the investigative interviews, there are allegations of another instance or different type of maltreatment?*
- *What if there may be a criminal investigation of the alleged maltreatment?*

### *To which types of investigations does this requirement apply?*

### Discussion:

CAPTA is federal legislation with federal terminology and definitions of abuse and neglect. Various state's definitions of abuse and neglect, as well as other related definitions may not be strictly consistent with federal terminology or definition. Therefore, questions may arise regarding types of investigations to which this notification applies.

It appears the intent of the CAPTA amendment is to ensure that subjects are informed of the allegations against them, irrespective of whether the allegation strictly fits within the federal statutory definitions and terminology of abuse and neglect. For example, it would appear that this requirement includes notifying youth of the allegations against them, in cases of sibling abuse or adolescent perpetration of sexual abuse.

### Guideline:

The CAPTA notification requirement applies to the initial time of contact with the individuals who are the subject of the complaint or allegation, regardless of how the agency defines the nature of the complaint or allegations for purposes of assignment to the assessment/investigation (e.g., abuse, neglect, dependency, or children in need of protection). The subject of the investigation may be persons other than the parent (e.g., a boyfriend, or caretakers of the child, or siblings).

### *What constitutes first contact?*

### Discussion:

The CAPTA requirement reflects our government's interests and responsibility in ensuring the civil rights of subjects of child maltreatment investigations in accordance with the Fourteenth Amendment right to due process. Subjects must be aware of the allegations made against them so they may be fully informed prior to giving consent to investigative activities. Therefore, notification must be made prior to engaging the subject in conversation about the alleged maltreatment.

There is no stipulation that the subject be the first person interviewed during the investigation. In some cases, collateral sources of information or the alleged child victim will be interviewed prior to interviewing the subject of the investigation.

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## **Guideline:**

First contact can either be in person or by telephone, whichever is the actual first contact with the subject of the investigation as the public child welfare agency worker is gathering information during the investigation. The notification must be made prior to discussing the allegation with the individual.

## ***How much detail regarding the allegation should the investigator provide to the subject of the investigation?***

## **Discussion:**

The Fourteenth Amendment right to due process includes the right to make fully informed, voluntary decisions whether to consent to searches. Therefore, prior to proceeding with the information gathering phase of the interview, caseworkers must provide enough information so that subjects of the investigation know what they are consenting to.

However, the identities of the reporter and any person providing information during the course of the investigation must remain confidential. In many cases, the individual subject of the investigation can easily determine who knew about the alleged maltreatment and who was likely to report it. Still, the worker must not confirm the identity of the reporter.

Workers must always bear in mind that a criminal investigation of child abuse and neglect cases is a possibility. Close communication with police must be maintained so that caseworkers will be aware of concurrent criminal investigations. Also, a criminal investigation may be triggered at any time, based upon information acquired during the caseworker child maltreatment investigation.

Workers are not required to, and should not, give Miranda warnings. Miranda warnings are given by law enforcement officers to individuals suspected of crimes when the individuals are in law enforcement custody.

## **Guideline:**

Workers should provide enough information so the subject of the investigation understands why the agency is conducting an investigation, but should not give details that will compromise ongoing criminal investigations and must protect the identity of the reporter at all times. Prior to asking an individual subject any questions about the alleged maltreatment, workers should consider using direct, non-inflammatory language and methods that address the following elements:

- That a report was made to the agency
- That the agency is required by law to investigate the report
- That the report states that abuse or neglect (whichever is the case) may have occurred
- A general description or paraphrase of the report
- That the report states that the subject was possibly involved in the situation (if so)

Parents should be informed that their cooperation is both voluntary and that the public child welfare agency must pursue the investigation by all legal means necessary to “final determination.”

For example, depending upon case details, the worker may state that there was a report that the children were possibly neglected in that they were left unsupervised, or that a child may have been abused

and has bruises on his face, or that a child may have been abused by being touched in a sexual manner.

Because of concern about revealing the identity of the reporter, it may be advisable not to provide detailed information from the report regarding how the alleged maltreatment occurred, the frequency of the maltreatment, or other such specific details. The name of the reporting source cannot be disclosed, nor should the identity of witnesses or specific items of evidence be disclosed. If there is a concurrent law enforcement investigation, or if one is likely, the public child welfare agency should check with the police to assure that details that might compromise the criminal investigation are not released. Workers should not provide a copy of the report of the allegations to the subject of the investigation nor read the allegations verbatim.

## *Example of appropriate level of detail needed during notification:*

“My name is Jane Doe. I am a caseworker with Child Protective Services. We are required by law to investigate all reports of possible abuse or neglect. We have received a report about your daughter, Cyndi. May I come in so that we can talk about this?”

Then... (in cases where the subject of the investigation is identified by the reporter):

“We received a report that Cyndi may have been abused, because there are bruises on her face. The report also states that you may have been involved in this situation. I am required by law to pursue this investigation until I can determine if the allegations are true or not, but as I do not now have a court order, your cooperation is voluntary. However, I’m hoping that you will answer my questions so we can determine if there are any problems.”

## *Another example (in cases where the subject of the investigation is not known):*

“My name is Jane Doe. I am a caseworker with Child Protective Services. We are required by law to investigate all reports of possible abuse and neglect. We received a report about your son, Terry. May I come in so that we can talk about this?”

Then...

“Thank you. We received a report that Terry was possibly neglected because he was walking around outside, unsupervised last Tuesday evening. I am required by law to pursue this investigation until I can determine if Terry is in need of protective services, but at this time, your cooperation is voluntary. I’m hoping that we can discuss it, so that we can get it straightened out, and link you with services if needed. Can you tell me about the situation?”

Caseworkers will need to develop their own interviewing approach and be able to adapt it as needed for different situations and individuals.

Informative handouts or booklets that notify parents of their rights and explain agency and juvenile court procedures should be developed. Agencies should develop guidelines and procedures for distributing these booklets as part of the investigative process.

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When parents are unwilling to voluntarily provide needed information, the worker should inform the parents of the agency's legal obligations to continue its assessment to determine if there is serious risk of harm, and, if children are found to be at serious risk of harm, of the agency's obligation to pursue legal options to protect the child. Once it is determined that the agency will initiate court action, the worker should notify the individuals as to where and when the court hearing will be held and their responsibilities to attend, what the agency will ask the court to do, and how the parent can obtain an attorney.

CAPTA also requires that individuals be apprised of their rights to appeal agency actions. Agencies must fully explain the rights and procedures of appeal.

## *What if the investigator is unsure who the perpetrator is?*

### **Discussion:**

In many cases, the identity of the perpetrator is not known at the time of reporting. Many reports allege harm to a child without naming any adult as the person responsible for that harm.

### **Guideline:**

In the course of the investigation, information may be obtained from one individual that another individual could have caused the maltreatment. In these situations caseworkers must notify alleged perpetrators of the allegation against them prior to gathering information from them.

## *What if, during the course of the investigative interviews, there are allegations of another instance or a different type of maltreatment?*

### **Discussion:**

Occasionally, additional maltreatment will be alleged during ongoing CPS investigations. Additional allegations should prompt another consent request. More often, however, additional quantitative evidence will be identified during the investigation. For example, if while investigating reported facial bruises with a consenting parent, burn marks and lacerations are discovered on other parts of the child's body, it is not necessary to request additional consent, if additional quantitative evidence is necessary to determine whether alleged maltreatment has occurred and is serious.

### **Guidelines:**

New allegations of abuse or neglect during an ongoing investigation would warrant a new request for consent by the subject to proceed with a qualitatively different aspect of investigation. This should be considered an "initial" contact for investigation with respect to the CAPTA guidelines.

More common is that the social worker will identify additional quantitative evidence of the alleged maltreatment during the initial investigation. This does not require seeking additional consent if the initial consent was appropriately constructed.

## *What if there is a criminal investigation of the alleged maltreatment?*

### **Discussion:**

Although CAPTA is silent on this issue, guidance has been provided by the U.S. Department of Health and Human Services, Ad-

ministration for Children and Youth (Web site: April 2005, go to Children's Bureau, Initiatives).

... States should be careful not to compromise their own investigations or a concurrent criminal investigation that may lead to criminal charges against a perpetrator of serious child maltreatment. In cases alleging severe physical abuse or sexual abuse, for example, it is critical that CPS and law enforcement investigations be either jointly conducted or at the least carefully coordinated. Investigation of cases involving alleged perpetrators of serious crimes against children should be synchronized between CPS and law enforcement so that relevant evidence of offenses not be concealed or destroyed, child victims not be subjected to undue influence to give or not give information to CPS or law enforcement investigators, or that actions get taken that would place children at greater risk. Such coordination should help ensure that criminal investigations are not undermined.

### **Guidelines:**

Public child welfare agencies should coordinate their investigative activities with law enforcement. In most jurisdictions, this is a stipulated part of law and rule.

In cases involving criminal investigations, law enforcement officers should determine how and when to notify a subject of the investigation, and workers should follow their lead. Public agency caseworkers should plan their activities so as not to compromise a criminal investigation.

However, children's safety cannot be compromised for the sake of building a criminal case. The fact that law enforcement is involved does not relieve public child welfare agencies of their statutory responsibilities to protect children at high risk of imminent serious harm. CPS caseworkers and law enforcement officers should cooperate to assure both a thorough investigation of criminal cases and the safety of all involved children.

## **Issue 2: Obtaining Consent From the Subject of the Investigation to Enter the Home or to Interview Children or Family Members**

*The Fourth Amendment of the U.S. Constitution stipulates persons have the right to be free from unwarranted searches. Courts have determined that Fourth Amendment rights apply to certain aspects of CPS investigations, including interviewing children and the subjects of the investigation, and accessing children.*

*Workers may have access to the home or children only under the following circumstances:*

- *The subject of the investigation consents to such access. Consent must be freely given and must not be coerced.*
- *There is an exigent threat to the child's safety.*
- *The child welfare agency or law enforcement has obtained a warrant or a court order.*

### **Questions:**

- *What types of actions could invalidate consent?*
- *Are behavioral, rather than verbal, indicators of consent sufficient?*
- *Are separate consents needed to look in cupboards and*

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*bedrooms and to take pictures of the home?*

- *What are exigent circumstances?*
- *What if the subject refuses to allow the worker to access the home or the child? How does the worker obtain a warrant or court order?*

*What types of actions could invalidate consent?*

### **Discussion:**

Consent must be informed and freely given and may be revoked at any time by the consentor.

Consent may not be obtained by threat, intimidation, duress, promises, or subterfuge. For example, workers may not obtain consent by doing the following:

- Threatening to call in law enforcement to obtain the subject's cooperation
- Threatening to remove the child because the individual subject has not cooperated with the investigation
- Promising the subject he or she will not have his or her child removed if cooperation is forthcoming

At the same time, the caseworker should provide the subject with as complete and balanced a depiction of the agency's responsibilities, and probable contingent activities, as circumstances dictate. While it is bad practice to threaten, coerce, or intimidate, it is equally bad practice to withhold information regarding the agency's responsibility to use whatever means is available and necessary to obtain information essential to determining a child's safety. The subject cannot provide informed consent without knowing all pertinent information.

### **Guidelines:**

The worker should explain the purpose for conducting the investigation and ask for the subject's cooperation (see Issue I: Notification).

If the subject refuses to cooperate, caseworkers should seek guidance from their supervisor and attorney or prosecutor. However, workers should not use this as a threat. A recommended response would be, "I will go back to the office and talk with my supervisor about this situation." The worker and supervisor would then jointly determine the best course of action.

It is important to understand that, while consent must be obtained to gain access to the child or the home (except in the case of exigent or emergency circumstances – see Issue #2), consent is not necessary to conduct other investigative activities, such as interviewing collateral contacts. Therefore, investigative activities may proceed even if a subject has refused to cooperate with the investigation.

*Are behavioral, rather than verbal, indicators of consent sufficient?*

### **Discussion:**

Yes. Examples of behavioral indicators may include the following: The subject responds to a request to enter the house by motioning the worker toward the interior of the home. The subject responds to a request for an interview by beginning to talk, or the subject responds to a request to interview a child by shrugging her shoulders and motioning toward the child.

### **Guidelines:**

When the subject behaviorally gives consent through gesture and action, the worker should verbally acknowledge the consent with language that clearly declares the worker's interpretation that consent has been given, such as "Thank you for letting me talk with you, Joan," or "Thanks for letting me see your home." The worker should document this in the case record.

*Is separate consent needed to look in cupboards or bedrooms and to take pictures of the home?*

### **Discussion:**

Yes. For example, consent given to participate in an interview does not apply to looking through the house. Separate consent is required for each additional investigative activity, such as looking in cupboards or bedrooms and taking pictures of the home.

### **Guideline:**

The worker should seek separate consent for each investigative activity, such as looking in cupboards and taking pictures of the child's environment. If the subject does not give consent for those activities, then the worker must not conduct those activities unless there is an emergency or the worker has a court order. The worker should document all requests for consent, the subject's responses, and subsequent activities in the case record.

*Example:*

"Mrs. Jones, part of the information we received was that there was insufficient food in the house. I want to be as fair and objective as possible. So, to find out if there is enough food for your family, I would like to look in your cupboards and refrigerator. Could I get your permission to look in the cupboards and refrigerator? Would you please come with me, so that you can show me around?"

Workers should use discretion in determining when to check for injuries and when to photograph them. Workers should not check for injuries or take photographs for every allegation of abuse or neglect but should do so only when the allegation indicates that there are possible injuries. This raises the question of whether workers should check for injuries in addition to the ones reported in the allegation. Workers should do so when there is good reason to believe that additional new or old injuries or marks suggesting such injury may be present. The presence of suspicious physical injuries, such as pathognomonic bruises, cigarette burns, and belt or wire lacerations, is itself justification to look for additional such injuries to help determine the frequency and scope of alleged abuse and to complete a proper assessment of risk of future harm. Additional search for injury is also appropriate if a previous case record has substantiated abuse with multiple injuries, or if the child has disclosed additional injuries. In these situations, it may be permissible to remove a child's clothing and take photographs of the other injuries. Photographing injuries can be an important part of documentation.

It is good casework practice to ask parents to help physically examine a child for injuries, if the facts warrant such a search, especially if a child's clothing must be removed. Most children are appropriately uncomfortable or feel threatened when a stranger attempts to remove their clothing. If the parent refuses to give consent to check for injuries or take photographs, workers should consult with their supervisor on the best course of action.

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Some states have laws specifically addressing photographing suspected child abuse injuries. For example, Ohio allows mandated reporters to take photographs of injuries and to take photographs of children in out-of-home-settings (e.g., schools, foster homes, and day camps).

## *What are exigent circumstances?*

### **Discussion:**

The Fourth Amendment allows access to the child and the home without consent, if there are exigent circumstances. In this case, exigent circumstances are CPS emergencies where a child is in immediate danger of serious harm, and time does not permit obtaining a court order. An example would be if a worker arrives at the home and finds a very young child who has been left alone.

### **Guidelines:**

In exigent circumstances, caseworkers may proceed to gain access to a child without parental permission. Workers should immediately contact their supervisor to discuss the situation and to develop a plan for securing the child's safety. Workers should follow agency policy and procedure for removing a child from the home, if that becomes necessary.

In other exigent circumstances, the situation may be dangerous for the child and the worker. In these cases, law enforcement officers should be called to the home.

## *What if the subject refuses to allow the worker to access the home or the child? How does the worker obtain a warrant or court order?*

### **Discussion:**

Many juvenile courts have specific procedures that compel parents to comply with agency requests to interview them or a child, to observe a child, or to access their home. These may include orders to access or temporary protective orders. Courts vary in their procedures for obtaining these types of orders. Judicial officers will consider whether there is reasonable belief the child is in danger of maltreatment when determining whether to compel the parents to cooperate. Agencies are unlikely to obtain a juvenile court order when the maltreatment report is vague and/or anonymous, unless additional information is gathered to satisfy the court that there is a reasonable belief that the child is in substantial danger of serious harm.

### **Guidelines:**

In cases where there is no confirmable immediate danger of serious harm and parents refuse to cooperate with the investigation, workers should consult with their supervisor and agency attorney or prosecutor to consider whether legal action should be taken.

If the screening report alleges child maltreatment, but provides no confirmable evidence, workers should attempt to gather additional information from collateral sources prior to approaching juvenile court for an order compelling access to the child. Juvenile court will consider what information has been obtained when making a determination of whether to order the parents to comply with the investigation.

Workers should have access to agency attorneys, prosecutors, or other legal consultants to discuss these and other questions related to legal procedures.

## **Issue #3: Involving Law Enforcement During Investigations**

*At times, the presence of law enforcement may be necessary to ensure that the protective service investigation proceeds. Police may be asked to accompany CPS workers when a CPS worker has determined that the safety of a child or family member, or the worker's own safety is threatened during the protective service investigation. Law enforcement support may also be needed to facilitate parental cooperation with court orders. However, law enforcement must not be used for manipulation or preemptive intimidation.*

### **Question:**

*When does involving law enforcement during investigations become coercive?*

### **Discussion:**

The presence of a police officer may be perceived by family members as coercive but may be a warranted use of authority in some situations. The worker's intent in asking law enforcement to assist with an investigative interview is critical. Law enforcement officers should not be involved for the purpose of intimidating subjects into cooperating with the investigation.

### **Guidelines:**

In general, the presence of law enforcement officers should be limited to the following situations:

- The agency has reasonable belief that a child or another family member is in immediate danger of serious harm
- The agency has reasonable belief that a crime has been or is being committed against the child
- The agency has reasonable belief that the worker is, or will be in danger of personal harm during the course of the investigation
- The presence of law enforcement is otherwise required by law

The reason for involving law enforcement officers should be documented in the case record.

Caseworkers should be familiar with state and county policies and procedures for involving law enforcement during investigations. These policies and procedures should specify the situations in which law enforcement should participate in child maltreatment investigations, as well as the tasks they should perform.

Public child welfare agency administrators should review their policies and procedures to determine if these should be revised to assure congruence with CAPTA requirements.

## **Issue #4: Conducting Interviews With Children at School Without Parental Knowledge or Against Parental Wishes**

*When parents send their children to school, they have the right to expect the school system to ask their permission before their children are exposed to most contacts by persons outside the school system. Conducting interviews at school, without parental permission or against the parent's wishes, may impact their rights to parent their children without unsolicited and unwarranted governmental interference.*

*However, failing to interview a child at school may result in an incomplete investigation, and the agency may fail to protect the child from*

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further maltreatment. The agency must balance the two dangers inherent in this dilemma: failure to protect the child versus violating parents' rights to due process.

### Questions:

- When is it permissible to conduct investigative interviews with an alleged child victim at school without first informing the parent about this activity?
- When is it permissible to conduct investigative interviews with an alleged child victim at school against the parent's wishes?
- When is it permissible to conduct investigative interviews at school with an alleged child victim's siblings?

**When is it permissible to conduct investigative interviews with the alleged child victim at school without first informing the parent about this activity?**

### Discussion:

Investigative interviews should not be conducted at school as a matter of standard operating procedure or just because it is more convenient to do so. Each case should be evaluated to determine the necessity of interviewing the child at school.

Specific facts about the allegation should dictate the need to conduct investigative interviews at school. For example, a child who discloses at school that there is current or ongoing physical or sexual abuse may need to be interviewed at the school to determine if the child is at immediate risk of serious harm upon returning home. Indications that children would be unwilling to discuss the alleged maltreatment in their own home would also warrant interviewing them at school. On the other hand, there would be no reason to interview children at school regarding neglect due to potentially unsanitary conditions at home. In most suspected neglect cases, it is more reasonable to interview children at home.

### Guidelines:

Investigative interviews at school without a parent's knowledge should be limited to the following situations:

- There are reasonable grounds to believe a child will be maltreated upon returning home from school
- There are reasonable grounds to believe a child may be intimidated if the alleged maltreatment is discussed in the home
- The child requests to be interviewed at school

The worker should document the necessity of interviewing the child at school in the case record.

Unless there is good reason not to, caseworkers should follow school protocol related to conducting investigative interviews at schools. Some schools do not permit investigative interviews. Caseworkers should follow agency procedures for how to proceed in those situations.

**When is it permissible to conduct investigative interviews with alleged child victims at school against the parent's wishes?**

### Discussion:

When parents have expressed their desire not to have their child interviewed at school, CPS workers should not interview the child at school unless there are exigent circumstances regarding child safety that justify the interview.

### Guidelines:

When interviewing a child at school is necessary to assure the child's safety and the child's parents have expressed that such an interview not take place, caseworkers should consult with their supervisor and with the agency attorney or prosecutor to discuss gaining access to the child at school. The agency may also request that the juvenile court order the parents to comply with the agency's request to interview the child at school.

The worker's activities regarding these situations should be documented in the case record.

**When is it permissible to conduct investigative interviews at school with the siblings of the alleged child victim?**

### Discussion:

During an interview of an alleged child victim at school, information may arise which suggests it is necessary or appropriate to interview the child's siblings at school. For example, an alleged child victim could disclose that a sibling has also been abused or that a sibling has witnessed maltreatment.

### Guidelines:

Workers should not routinely conduct interviews with siblings at school as a matter of convenience. Workers should interview siblings at school only when an interview with an alleged child victim at school provides information indicating there is immediate danger of serious harm to the alleged child victim or to a sibling. Workers should document the reason for interviewing siblings at school in the case record.

Public child welfare agency administrators, agency attorneys or prosecutors, and school boards and administrators should collaborate to develop formal policies and procedures to guide interviewing siblings at school.

## Issue #5: Interviewing Collaterals Without the Subject's Knowledge

*A complete investigation requires gathering information from a variety of sources.*

### Question:

**What are the limits of a caseworker's authority in contacting collateral sources of information?**

### Discussion:

A complete CPS investigation often requires gathering information from collateral sources who may have information about the alleged child maltreatment. In many cases, it is possible to gain a subject's cooperation in contacting those people. In other circumstances, it may be necessary to contact collaterals without parental knowledge or permission. For example, a worker may need to gather information from collateral sources to support a request to juvenile court for an order compelling the subject to allow access to the home or to the alleged child victim.

### Guidelines:

Workers should attempt to gain a subject's cooperation in contacting collaterals. Workers should explain the requirement to conduct a complete and objective investigation and assessment of the family's situation and should ask the subject for a list of people who could be of help in providing information pertaining to the investigation.

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Workers should also ask the subject to complete a release of information form to be included in the case record. Following is an example of how to ask for information about collateral sources of information:

*Example:*

“Ms. Jones, as you know, I need to complete an objective and thorough investigation. To do this, it may be necessary for me to talk with people who are familiar with your family. Would you help me to identify people who know your family well?”

When a worker needs to make collateral contacts without a parent’s knowledge or permission, the worker may contact anyone believed to have information that is pertinent to the investigation. The original referral source may identify collateral sources, some of whom may then identify other sources. Workers may also contact collateral sources, such as relatives or child care providers, who logically would be expected to have pertinent information about the child and family.

Interviewing collaterals against parental wishes is an important issue. A case by case analysis should be made to determine whether it is necessary and appropriate to contact a collateral source over a parent’s opposition. Workers should consult with their supervisor and agency attorney or prosecutor in these situations.

Caseworkers should consider the following factors in determining whether to proceed with contacting collaterals against a parent’s wishes:

- The parent’s reasons for objecting (e.g., confidentiality or safety concerns, as opposed to a desire to obstruct the investigation)
- The importance to the investigation of the information the collateral contact is expected to provide
- Whether the information can be gathered from other sources without conducting interviews

If caseworkers determine, after careful consideration and consultation with their supervisor, that contacting collaterals is necessary, workers should proceed but should contact only collaterals who are likely to have specific information pertinent to the allegation.

During collateral contacts, the caseworker should protect the privacy of the family being investigated as much as possible and should only share information necessary to collect pertinent data. The worker should not provide details about the allegation to collateral sources.

*Example:*

“Mr. Smith, my name is Alice Jones, and I am from County Child Welfare. We received a report that your nephew, Charles, has two black eyes. We are trying to determine what happened to Charles. Can you share with me any information that would be helpful in understanding the current situation?”

If Mr. Smith asks for details about the report, the worker could state something like the following:

“Mr. Smith I’m sure you can understand the importance of protecting the family’s privacy in this situation. I really can’t tell you about the details of the report. However, I

am very interested in finding out what happened, so we can make sure Charles is safe. Do you have any information that would be helpful in understanding this situation?”

## SUMMARY

The CAPTA revisions were promulgated to increase CPS workers’ awareness of, and capacity to assure, the civil rights of subjects of child protective services investigations. These revisions were not intended to decrease child welfare’s commitment to completing thorough and balanced investigations. The CAPTA revisions are best interpreted as an impetus both to assure the civil rights of all concerned and to redouble our efforts to provide complete and thorough CPS investigations that protect children at high risk of serious harm from abuse or neglect.

## Acknowledgments

This document was developed in collaboration with the Ohio Child Welfare Training Program CAPTA work group. The authors acknowledge the contributions of the following members:

Yvonne C. Billingsley, JD, Jerry Coleman, JD, LeRoy Crozier, Tammy Devine, Leslie McGee, Christine Julian, JD, Bob McClaren, JD, Katheryn Mercer, MSSA, PhD, JD, Christina Rosebough-Schneider, JD, Timothy Stolitca, Dave Thomas, and Catherine Pomeroy Tucker, JD

Thanks also to Howard Davidson, JD, Director, American Bar Association Center on Children and the Law, the National Resource Center on Legal and Judicial Issues, for his assistance in the development of this paper.

## Resources:

Ohio Administrative Code 5101:2-34-32 – Public Child Welfare Agency Requirements for Assessments and Investigations – available at <http://onlinedocs.andersonpublishing.com>

“New Child Abuse Prevention and Treatment Act (CAPTA) Requirements Concerning Parental Notification and Legal Rights,” available at U.S. Administration for Children and Families Web site: <http://www.acf.hhs.gov> and type in key word, CAPTA

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